

1 THE HONORABLE JOHN C. COUGHENOUR
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 HYDROFLOW USA LLC,

11 Plaintiff,

v.

12 HYDROTECH SOLUTIONS LLC,

13 Defendant.

CASE NO. C21-0714-JCC

ORDER

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15 This matter comes before the Court on Defendant HydroTech Solutions, LLC's Motion
16 to Dismiss, Abate, or in the Alternative, Transfer Venue. (Dkt. No. 16.) Having thoroughly
17 considered the parties' briefing and the relevant record, the Court finds oral argument
18 unnecessary and hereby GRANTS the motion in part and DENIES it in part for the reasons
19 explained below.

20 **I. BACKGROUND**

21 This dispute arises from an April 1, 2016 Distributor Agreement (the "Agreement")
22 under which Plaintiff HydroFLOW USA LLC ("Supplier"), a Washington LLC, granted
23 Defendant HydroTech Solutions LLC ("Distributor"), a Texas LLC,¹ the right to market and sell

24
25 ¹ The Court notes that, although Supplier has sued HydroTech Solutions, LLC, a Texas limited
26 liability company, its Agreement is with HydroTech Solutions, Inc., a Texas corporation.
(Compare Dkt. No. 9 at 1, with Dkt. No. 9-1 at 2.)

1 Supplier's products in Texas and Oklahoma. (See Dkt. Nos. 9 at 1, 9-1 at 2–3, 18.)

2 In spring 2021, tensions within Distributor's leadership spilled into a dispute with
 3 Supplier, with Distributor on one side and a dissident faction of its leadership aligned with
 4 Supplier on the other. (See Dkt. Nos. 9-2 through 9-4.)

5 Specifically, Distributor stripped authority from its then-president Brent Mulliniks due to
 6 his alleged misconduct. (See Dkt. No. 9-3.) Mulliniks, however, had long handled Distributor's
 7 relationship with Supplier, which now refused to continue dealing with Distributor unless
 8 Mulliniks was reinstated. (See Dkt. Nos. 9-4, 9-5.) On April 27, 2021, Supplier's counsel
 9 emailed Distributor's counsel a letter stating that the Agreement would terminate unless
 10 Distributor met Supplier's demands by April 30, 2021. (See Dkt. No. 9-5.) Supplier's ultimatum
 11 invoked an Agreement clause authorizing termination upon written notice if there is a personnel
 12 change in Distributor's leadership; Supplier asserts that Mulliniks's ouster triggered this
 13 termination right. (*Id.*)²

14 On May 3, 2021, Distributor sued Supplier and Mulliniks in Texas state court, bringing
 15 various business tort, contract, and trade secret claims against them and seeking declaratory
 16 judgment against Supplier that the Agreement remains in force. (See generally Dkt. No. 17 at 6–
 17 43 (Texas state court pleadings).) On May 10, 2021, the Texas state court entered a temporary
 18 restraining order barring Supplier from, among other things, contacting Distributor's customers
 19 regarding the sale of products under the Agreement. (*Id.* at 47–48.) Four days later, Supplier
 20 sued Distributor in state court in King County, Washington, seeking a declaratory judgment that
 21 Supplier had terminated the Agreement. (See Dkt. No. 1-1 at 4–7.) Distributor removed to this
 22

23 ² Distributor's instant motion does not present the issue of whether the April 27, 2021 notice is
 24 valid under the Agreement. (*But compare* Dkt. No. 9-5 (April 27, 2021 letter “[s]ent via email
 25 only” to counsel with the legend “ER 408 COMMUNICATION – FOR CONFIDENTIAL
 26 SETTLEMENT PURPOSES ONLY”), *with* Dkt. No. 9-1 at §§ 19, 24.4 (agreement provisions
 requiring communications to be sent by mail and specifying addressees for required notice), *and*
 Dkt. No. 11 at 9 (“A trial court can only consider admissible evidence in ruling on a motion for
 summary judgment.” (citation omitted)).)

1 Court based on diversity jurisdiction and Supplier amended its complaint to assert tort claims
2 against three individuals affiliated with Distributor. (Dkt. Nos. 1, 9.)

3 As mentioned, Distributor's territory under the Agreement encompasses Texas and
4 Oklahoma; since the Agreement's inception, Distributor has sold products as authorized by the
5 Agreement. (Dkt. No. 17 at 2.) It has never done business in Washington other than purchasing
6 products from Supplier to resell in Texas and Oklahoma. (*Id.* at 1–2.) The three Distributor-
7 affiliated individual defendants sued by Supplier are two Texas residents and one California
8 resident; Distributor's CEO also indicates that, of the seven primary witnesses involved in this
9 dispute, five are in Texas (including Mulliniks) and one is in California. (Dkt. No. 17 at 3–4, 7.)
10 The Court infers that the seventh witness is Supplier's CEO Tal Journo, who is in Washington.
11 (See Dkt. No. 9-3 at 2.)

12 Discovery is underway in the Texas state court litigation; the parties have propounded
13 written discovery, taken and defended depositions, and scheduled a mediation and contested
14 hearings. (Dkt. Nos. 31-1, 36 at 4.)

15 **II. DISCUSSION**

16 **A. First-to-File Doctrine**

17 Distributor urges the Court to dismiss this case under the first-to-file rule. (Dkt. No. 16 at
18 5.) This is a doctrine of federal comity under which the court in a second-filed lawsuit has
19 discretion to transfer, stay, or dismiss the later-filed case if a substantially similar case is pending
20 in another district. *See, e.g., In re Bozic*, 888 F.3d 1048, 1051–52 (9th Cir. 2018). As Supplier
21 points out, though, because first-to-file is a doctrine of federal comity, it does not apply if the
22 first case was filed in state court. *See, e.g., Goldmanis v. Insinger*, 2014 WL 3739430, slip op. at
23 6 (W.D. Wash. 2014).

24 A similar doctrine articulated in *Brillhart v. Excess Ins. Co. of Am.*, 316 U.S. 491, 495
25 (1942) permits a federal court to decline jurisdiction over a federal declaratory judgment case if a
26 declaratory judgment case involving the same issues is already pending in state court. *See Gov't*

1 *Employees Ins. Co. v. Dizol*, 133 F.3d 1220, 1225 (9th Cir. 1998). By declining jurisdiction in
 2 such circumstances, federal courts discourage forum-shopping, avoid duplicative litigation, and
 3 avoid needlessly deciding state law issues. *Id.* Because the parties have not briefed this issue,
 4 however, the Court declines to resolve Distributor’s motion on *Brillhart* grounds. Distributor’s
 5 motion to dismiss is thus DENIED without prejudice.

6 **B. Transfer of Venue**

7 The Court next addresses Distributor’s request in the alternative to transfer venue. Under
 8 28 U.S.C. § 1404(a), “[f]or the convenience of the parties and witnesses, in the interest of justice,
 9 a district court may transfer any civil action to any other district . . . where it might have been
 10 brought.” The purpose of § 1404 is to prevent wasted time, energy, and money and to protect
 11 litigants, witnesses, and the public from unnecessary inconvenience and expense. *Van Dusen v.*
 12 *Barrack*, 376 U.S. 612, 616 (1964). A motion to transfer under § 1404(a) requires the movant to
 13 show that (1) the action “might have been brought” in the transferee district; and (2) the transfer
 14 would be for the convenience of parties and witnesses, in the interest of justice. *Authentify Pat.*
 15 *Co., LLC v. StrikeForce Techs., Inc.*, 39 F. Supp. 3d 1135, 1148 (W.D. Wash. 2014). The latter
 16 step involves balancing numerous factors to determine if transfer is appropriate. *Id.*

17 1. Whether Supplier Could Have Filed this Case in the Northern District of Texas

18 An action “might have been brought” in the transferee district if the transferee court
 19 would have proper subject matter jurisdiction, personal jurisdiction, and venue. See *Silver Valley*
 20 *Partners, LLC v. De Motte*, 2006 WL 2711764, slip op. at 1 (W.D. Wash. 2006) (citing *Hoffman*
 21 *v. Blaski*, 363 U.S. 335, 343–44 (1960)). Distributor seeks transfer to the U.S. District Court for
 22 the Northern District of Texas. (Dkt. No. 16 at 7.) Supplier does not challenge venue or subject
 23 matter jurisdiction but argues that transfer is improper because it is not subject to personal
 24 jurisdiction in Texas. (Dkt. No. 30 at 10–11.)

25 That argument misses the mark. The question is whether *this case* that *Supplier filed*
 26 “might have been brought” in the Northern District of Texas. It is thus immaterial whether Texas

1 has personal jurisdiction over Supplier as long as it has personal jurisdiction over the Defendants
 2 that Supplier sued. *See e.g., Sunbelt Corp. v. Noble, Denton & Assocs., Inc.*, 5 F.3d 28, 31 (3d
 3 Cir. 1993); *Silver Valley Partners*, 2006 WL 2711764, slip op. at 1 (“[T]he defendants must be
 4 subject to personal jurisdiction in the transferee district” (emphasis added)). Supplier cannot
 5 dispute that Texas Courts have personal jurisdiction over Distributor, a Texas LLC with its
 6 principal place of business in Dallas, Texas (Dkt. No. 9 at 1), or individual defendants who either
 7 reside in Texas or allegedly have strong ties there related to Supplier’s claims, (Dkt. Nos. 9 at 2,
 8 6–7, 17 at 3–4). Distributor is thus also wrong that the Court “cannot adequately evaluate the
 9 need to transfer this case . . . until the Texas trial court rules on the jurisdictional issue.” (Dkt.
 10 No. 35 at 5.) The Court holds that this case “might have been brought” in the Northern District of
 11 Texas.

12 2. Convenience and the Interest of Justice

13 Determining whether transfer under § 1404(a) would be for the convenience of parties
 14 and witnesses and in the interest of justice involves an individualized, case-by-case consideration
 15 of convenience and fairness based on multiple factors. *Jones v. GNC Franchising, Inc.*, 211 F.3d
 16 495, 498 (9th Cir. 2000). These include: (1) where the relevant agreements were negotiated and
 17 signed, (2) the state most familiar with the governing law, (3) the plaintiff’s choice of forum, (4)
 18 the respective parties’ contacts with the forum, (5) the contacts relating to the plaintiff’s cause of
 19 action in the chosen forum, (6) the differences in the costs of litigation in the two forums, (7) the
 20 availability of compulsory process to compel attendance of unwilling non-party witnesses, and
 21 (8) the ease of access to sources of proof. *Id.* at 498–99.

22 a. Relationship Between Location, the Parties, and the Facts

23 The first, fourth, and fifth factors of this framework concern the level of geographic
 24 connection among the parties, the facts of the case, and the forum state versus the transferee
 25 district. *See Chen v. Pioneer Oil, LLC*, 472 F. Supp. 3d 704, 709 (N.D. Cal. 2020) (citing *id.*).
 26 Here, the Western District of Washington has little connection to Supplier’s claims. Without

1 citing any supporting evidence or declarations, Supplier argues that transfer is improper because
 2 it negotiated the Agreement from Washington. (Dkt. No. 30 at 12.) While Distributor has the
 3 burden to show that transfer is proper, the Court need not credit Supplier's unsupported factual
 4 assertions. Even if Supplier did negotiate the Agreement in Washington, Distributor signed the
 5 Agreement through Mulliniks, a Texas resident. (*See* Dkt. Nos. 9-1 at 15, 17 at 7.) There also
 6 does not appear to be anything more than an incidental link between Washington and the facts
 7 from which Supplier's claims arise. Supplier alleges that a personnel change in Distributor's
 8 Texas-based leadership breached the Agreement and triggered the termination provision at issue.
 9 (Dkt. No. 9 at 5–6.) Supplier also alleges that Defendants tortiously interfered with Supplier's
 10 relationships with "customers throughout Texas, Oklahoma, and neighboring states." (Dkt. No. 9
 11 at 6.) That Distributor purchased the products from Supplier in Washington is only incidental,
 12 since Supplier's lawsuit is based on what Defendants allegedly did in Texas and the surrounding
 13 area. This factor heavily favors transfer.

14 *b. Familiarity with Governing Law*

15 The Agreement has a choice-of-law clause under which Washington law governs
 16 questions of validity, operation, interpretation, and construction of the Agreement. (Dkt. No. 9-1
 17 at 13, § 20.) Both parties agree this factor tilts against transfer. (Dkt. Nos. 16 at 9, 30 at 12.)
 18 Tempering that conclusion, however, is that many of Distributor's business tort claims in the
 19 Texas case may be compulsory counterclaims in this litigation and could be subject to Texas law.
 20 (Dkt. No. 16 at 9.) Still, this factor favors retention.

21 *c. Plaintiff's Choice of Forum*

22 Another factor to consider is the plaintiff's choice of forum. Courts give great weight to a
 23 plaintiff's choice of forum, especially where the chosen forum has strong ties to the dispute.
 24 *See Lou v. Belzberg*, 834 F.2d 730, 739 (9th Cir. 1987). As mentioned above, though, that is not
 25 the case here. Further, "[i]f there is any indication that plaintiff's choice of forum is the result of
 26 forum[-]shopping, plaintiff's choice will be accorded little deference." *Williams v. Bowman*, 157

1 F. Supp. 2d 1103, 1106 (N.D. Cal. 2001). If the plaintiff's lawsuit was "reactive," that could
 2 indicate its choice was the result of forum-shopping. *Cf. Volvo Constr. Equipment N. Am., LLC*
 3 *v. Clyde/West, Inc.*, 26 F. Supp. 3d 1033, 1038 (W.D. Wash. 2014) (conducting this inquiry in
 4 the context of the *Brillhart* doctrine mentioned above). In assessing whether a plaintiff engaged
 5 in forum-shopping, courts examine the sequence of events leading up to the filing of the case at
 6 issue, although the focus is not solely on timing. *Id.*

7 Here, Supplier advised Distributor in the April 27, 2021 letter that the Agreement would
 8 terminate on April 30 if Distributor failed to meet Supplier's demands. (See Dkt. No. 9-5.)
 9 Distributor filed the Texas lawsuit on May 3, 2021, seeking, among other things, a judicial
 10 declaration that the Agreement remained valid, notwithstanding Supplier's purported
 11 termination. (Dkt. No. 17 at 12–15, 23–24.) Adjudicating that declaratory judgment request
 12 would therefore resolve the same question presented in Supplier's current declaratory judgment
 13 claim, i.e., whether Supplier validly terminated the Agreement. Rather than answer that question
 14 through the Texas litigation, Supplier filed this lawsuit posing essentially the same question.
 15 (Dkt. Nos. 1-1 at 6, 17 at 3.) It did so shortly after a hearing in the Texas case where the state
 16 court entered a temporary restraining order to preserve the status quo. (Dkt. No. 17 at 45–48.)
 17 Although this Court does not find that Supplier's choice of forum is the result of forum-
 18 shopping, there are sufficient indicia of forum-shopping for the Court to conclude that the
 19 plaintiff's choice of forum deserves less weight than it otherwise might.

20 d. *Location of Witnesses and Evidence*

21 The Court agrees with Supplier that advances in e-discovery technology and electronic
 22 recordkeeping reduce the relative importance of this factor. (Dkt. No. 30 at 13.) Likewise, the
 23 use of video-conference technology may help mitigate costs associated with depositions. Still,
 24 for three reasons, this factor favors transfer. First, Supplier does not dispute that most witnesses
 25 in this case are in Texas. (Dkt. No. 17 at 3–4.) Second, the Court cannot assume that all
 26 depositions will occur by videoconference. Third, to the extent the case involves third-party

1 discovery, disputes over subpoenas could require litigating in the district where compliance with
2 the subpoena is required. *See Fed. R. Civ. P. 45(d)(1)*. Said differently, enforcing a subpoena
3 could require the parties in this case to litigate a third lawsuit in federal court in Texas.

4 e. *Cost of Litigation*

5 Supplier argues “[t]here is no difference in the cost of litigating in the two forums”
6 because “[b]oth parties have retained counsel *in each forum* to act on their respective
7 behal[ves].” (Dkt. No. 30 at 13) (emphasis added). The Court disagrees with the conclusion
8 Supplier draws from this premise. That both parties have had to retain separate sets of counsel in
9 Washington and in Texas suggests that fewer attorneys may be needed if the case is transferred.
10 Transfer would also potentially obviate the need for Washington-based counsel to travel to Texas
11 for any in-person depositions should the case remain here. This factor favors transfer.

12 f. *Totality of the Circumstances*

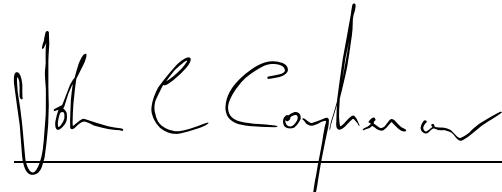
13 Nearly all the relevant factors favor transfer. Only the Agreement’s Washington choice-
14 of-law clause and Supplier’s choice of forum favor retention. Supplier’s choice of forum,
15 however, is due little weight as explained above. The Court thus holds that transfer would be for
16 the convenience of parties and witnesses and in the interest of justice.

17 **III. CONCLUSION**

18 For the foregoing reasons, Distributor’s motion (Dkt. No. 16) is GRANTED in part and
19 DENIED in part. The above-captioned case is hereby TRANSFERRED to the U.S. District Court
20 for the Northern District of Texas, Dallas Division.

21 DATED this 9th day of September 2021.

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John C. Coughenour
UNITED STATES DISTRICT JUDGE